

IN THE UNITED STATES COURT OF FEDERAL CLAIMS

STEPHANIE MERCIER,	)	
AUDRICIA BROOKS,	)	
DEBORAH PLAGEMAN,	)	
JENNIFER ALLRED,	)	
MICHELE GAVIN	)	Case No. 12-920 C
STEPHEN DOYLE, on behalf of	)	
themselves and all others similarly	)	Judge Elaine D. Kaplan
situated,	)	
	)	
Plaintiffs,	)	
	)	
v.	)	
	)	
THE UNITED STATES OF AMERICA,	)	
	)	
Defendant.	)	

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**REQUEST FOR STATUS CONFERENCE**

Plaintiffs request a status conference with the court to be held as expeditiously as possible. The government does not oppose this request. Three matters require prompt resolution by the court to allow this case to proceed.

**Discovery Completion, Pre-trial Procedures and Trial Date<sup>1</sup>**

Chief among these issues is – yet another – failure of the government to produce complete class members’ data required for damages calculation. The government advised Plaintiffs on September 17, 2020 that the information technology team conducting searches for class members’ data had utilized faulty algorithms in the searches regarding class members’ log-in/log-out times, View Alerts, and electronic Notes and Orders. Yesterday, October 1, 2020, the government advised Plaintiffs the missing data consists of 60 Million Notes and 180 Million Orders,

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<sup>1</sup> Plaintiffs note for the court discovery had been scheduled to be completed no later than September 15, 2020. (Dkt.#197.) Plaintiffs’ reluctantly agreed to extend fact discovery to October 1, 2020, and expert discovery to October 16, 2020 due to the need to schedule and complete 40 depositions between August 15 and September 15. (Dkt.#198.) The court approved this extension. (Dkt.#199.)

representing 248,000,000 data points, which the government has advised it *anticipates* will be produced “next week.” Plaintiffs’ damages expert presented her primary report July 15, 2020 as required. The expert requires the missing data to update and complete her report which cannot occur now until - at a minimum - several weeks following receipt of the missing data.

Damages experts for both parties are scheduled to be deposed October 13 and 15, respectively. These depositions cannot take place in the absence of complete and updated reports utilizing complete data. If Plaintiffs’ expert receives the missing data by October 9, her report won’t issue until October 23 – at the earliest. The government’s expert must then re-issue his report. Only then can meaningful depositions occur.<sup>2</sup>

These delays unreasonably compress the time frames for required pre-trial procedures and filings, and place maintenance of the trial date in jeopardy. (Dkt.#197.)

### **Required Exhaustion of Settlement Efforts**

Tied directly to this is the second issue: despite Plaintiffs’ repeated entreaties the government continues to decline to schedule settlement discussions required by RCFC Appendix A – 13. The government’s asserts it will consider scheduling settlement discussions at the close of discovery. The parties’ agreement to extend discovery through October 15 by definition narrowed the window for these efforts. The parties must certify exhaustion of settlement efforts by December 1, 2020 (Dkt.#197.) Plaintiffs have proffered their willingness to utilize one of several Senior Judges of the Court of Federal Claims as facilitators – judges whose services are in high demand, and who must be scheduled well in advance. The government to date declines. With the delay now

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<sup>2</sup> Plaintiffs note that today the government confirmed additional data also remains missing beyond the 248,000,000 “algorithm” data points. These include: no payroll data for 13 class members; no ETA/VATAS or production tour schedules for 3 class members; no production tour schedules for class members listed in Appendix F of Plaintiffs’ damages expert’s primary report; no View Alert files for 9 class members; and, no sign-on files for 4 class members.

required to complete expert discovery meeting the deadline to exhaust settlement efforts is seriously imperiled.

**Class Member Status – Montana VA**

The third issue relates to class member status for putative class members who worked at the Montana VA facilities: Plaintiffs assert the class definition as well as the court approved Class Notice necessarily include them; the government asserts Montana was not a “listed facility.” The parties will supply more detail on this issue to the court in advance of a scheduled status conference.

These issues require the prompt attention of the court. Plaintiffs respectfully request a status conference call as soon as possible.

Respectfully Submitted,

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October 2, 2020

**CERTIFICATE OF SERVICE**

I hereby certify that on October 2, 2020, I electronically filed the foregoing with the Clerk of Courts using the CM/ECF system, which will send notification of such filing to counsel for all parties.

s/David M. Cook  
David M. Cook